

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-663

November 13, 2003

NORTHERN UTILITIES, INC.
Request for Approval of Affiliated Interest
Transaction with Granite State Gas
Regarding the Lease of Office Space

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we approve an affiliated interest transaction between Northern Utilities, Inc. (NU or the Company) and its affiliate Granite State Gas Transmission, Inc. (GSG) whereby the Company will lease space in its Portland, Maine office located at 1075 Forest Avenue to GSG.¹

II. BACKGROUND

On September 5, 2003, NU filed a request for approval of an affiliated interest transaction with GSG entitled "Portland Office Lease." NU currently has no agreement in place which would cover NU leasing office/warehouse space currently occupied by GSG in NU's Portland offices. This is because Granite's use of Northern's office and warehouse facilities was overlooked when previous agreements between NU, GSG and Bay State Gas were recently reformed to reflect their reorganized corporate structure following their merger with the NiSource and Columbia companies. See *Northern Utilities, Inc., Request for Approval of Affiliated Interest Transaction to Approve a Service Agreement with Bay State Gas Company*, Docket No. 2002-614, Order (March 3, 2003) and *Northern Utilities, Inc., Request for Approval of Affiliated Interest Transaction with NiSource Corporate Services, Inc.*, Docket No. 2002-21, Order (July 2, 2002). Northern proposes this lease to provide a contractual instrument that would allow Northern to bill GSG for those facilities that GSG leases from Northern. It requests approval for effect on January 1, 2003, the date on which the prior affiliate agreement was superceded.

NU retained a licensed real estate appraiser to determine the fair market rate for the leased space. The most notable provision of the proposed lease is that utilities (except telephone service) and cleaning services are included in the monthly lease

¹ Northern has also included in its filing a separate agreement with GSG, entitled "Portsmouth Office Lease," that covers the lease of Northern's New Hampshire Division properties located in Portsmouth. We address only the Portland Office Lease because it falls within our authority.

price. The commercial real estate profession refers to such a lease as a “gross” lease and a “gross” lease will be more expensive to the lessee than a “net” lease, which would not include items such as utilities, cleaning or perhaps other items. The proposed lease is for approximately 581 square feet at a price of \$15,000 annually, or \$25.82 annually per square foot.

III. DECISION

A public utility may not arrange for the furnishing of any service with an affiliated interest until the Commission finds that the arrangement is not adverse to the public interest. 35-A M.R.S.A. § 707(3). In addition, Section 4(A) of Chapter 820 of the Commission’s Rules states that services provided by a utility to an affiliate will be priced at either the tariffed rate, if available, or in the absence of a tariffed rate, at a market rate if one is available. If a market rate is not available, these services are to be priced at fully distributed cost.

In this instance, no tariffed rate is available. Instead, NU has determined the fair market value of the real estate through an appraisal. The rate is at or near the top of the market range for “gross” leases as determined by the Company’s appraiser.² In addition, the Company has provided information showing the fully distributed cost for the Forest Avenue building would be \$18.33. Finally, the lease contains an annual escalator clause (effective January 1, 2004) that will increase the annual lease rates by changes in the Consumer Price Index (“CPI”). This escalator clause specifically prohibits downward price movements. The escalator clause provides some assurance that the lease price is structured to approximate market value, although markets often do not move so predictably. The provision that allows NU (or GSG) to terminate the lease at any time (without cause) on 45 days written notice reasonably assures that either party could respond to changes in the market going forward.³

Therefore we find that the agreement between NU and GSG is not adverse to the public interest because the price appears to be both equivalent to an arms-length negotiated price and also a fair market price. This satisfies both the 35-A M.R.S.A. § 707(3) and the Chapter 820, Section 4(A) criteria for approving the proposed lease. We do not rule on the rate effects of this arrangement, which we would determine in a rate proceeding.

² The range for gross leases in Portland was \$12.50 to \$26.25 per square foot.

³ Consistent with the spirit of Chapter 820’s market price requirement, we expect Northern to manage its affiliate transactions in an arm’s length manner.

Accordingly, we

O R D E R

That the lease agreement between Northern Utilities, Inc. and Granite State Gas Transmission, Inc., for properties located in Maine, as described in NU's petition filed September 5, 2003, is approved.

Dated at Augusta, Maine, this 13th day of November, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 21 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.